IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

**O R D E R**

Devban Goswami. Versus State of Rajasthan & ors.

S.B. Civil Writ Petition No. 6043/2005

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Date of Order: April 16, 2007

**PRESENT**

**HON'BLE MR. JUSTICE H.R. PANWAR**

Mr. M.R. Singhvi, for the petitioner.
Mr. Rameshwar Dave, Deputy Govt. Advocate, for respondents.

**BY THE COURT:**

By the instant writ petition, the petitioner seeks quashing of the order Annx.8 dated 29-9-2005 and the consequential order Annx.9 dated 1-10-2005.

I have heard learned counsel for the parties.

The facts and circumstances giving rise to the instant writ petition are that the petitioner was initially appointed on the post of Lower Division Clerk. Thereafter he was selected and appointed on the post of Stenographer Grade II and lastly he was holding the post of Stenographer Grade II. He submitted an application Annx. 1 dated 11-4-2005 seeking voluntary retirement under the Voluntary Retirement Scheme (VRS). The application seeking voluntary retirement under the VRS was forwarded vide letter Annx.2 dated 16-4-2005 to the respondent

No.3 Additional Director (Adm.) by the respondent No.4. Thereafter the petitioner submitted an application Annx.3 dated 1.7.2005 seeking withdrawal of his application for voluntary retirement under the VRS. However, on receiving the application Annx.3 dated 1-7-2005, the respondent No.2, vide letter Annx.4 dated 11-7-2005, required the petitioner to explain the reason for withdrawal of his application for voluntary retirement. Vide Anx.5 dated 28-7-2005, the petitioner intimated the reasons to the respondents for withdrawal of his application for voluntary retirement. The respondent No.2 sought comments from the respondent No.5 on the application submitted by the petitioner seeking withdrawal of the application for voluntary retirement explaining the reason for doing so by him. Vide order Annx.8 dated 29-9-2005, the respondents retired the petitioner voluntarily and in consequence thereto, vide Annx.9 dated 1-10-2005, the petitioner has been relieved as having voluntarily retired. Hence this writ petition.

A reply to the writ petition has been filed by the respondents stating therein that the application dated 11-4-2005 submitted by the petitioner seeking voluntary retirement under the VRS has been accepted on 29-9-2995 vide Annx.8 and consequent thereto, the petitioner was relieved on 1-10-2005 vide Annx.9.

It is contended by the learned counsel for the

petitioner that though the petitioner sought voluntary retirement under the Voluntary Retirement Scheme but it was with effect from 1-10-2005 and much prior to this date, i.e. on 1-7-2005, the petitioner sought withdrawal of the application for voluntary retirement and also explained the reasons for withdrawal of the application for voluntary retirement and, therefore, after withdrawal of the application for voluntary retirement, there was no reason for the respondents to retire the petitioner voluntarily.

The law on the issue is crystal clear and the legal position which emerges out from the catena of decisions of the Hon'ble Supreme Court is that an employee has a right to withdraw his application for voluntary retirement/resignation before its acceptance and in case the resignation is tendered with a stipulation to be effective from a future date, he can withdraw it even after its acceptance but prior to the date on which the resignation was to be made effective, vide Raj Kumar Vs. Union of India & ors., AIR 1969 SC 180; Union of India Vs. Gopal Chandr, AIR 1978 SC 694; P. Kasilingam Vs. P.S.G. College of Techology, AIR 1981 SC 789; Balram Gupta Vs. Union of India & ors., AIR 1987 SC 2354; and J.N. Srivastava Vs. Union of India & Anr. , AIR 1999 SC 1571.

In Shambhu Murari Sinha Vs. Project & Development India & Anr., (2000) 5 SCC 621, the Hon'ble Supreme Court held that the resignation, inspite of its acceptance, can be withdrawn

before the effective date, though on review petition, this decision came to be reviewed and set aside and subsequently in Shambhu Murari Sinha Vs. Project and Development India & Anr., AIR 2002 SC 1341, the Hon'ble Supreme Court held as under:-

> "Coming to the case in hand the letter of acceptance was a conditional one inasmuch as though option of the app0ellant for the voluntary retirement under the scheme was accepted but it was stated that the 'release memo along with detailed particulars would follow'. Before the appellant was actually released from the service, he withdrew his option for voluntary retirement by sending two letters dated August 07, 1997 and September 24, 2007, but there was no response from the respondent. By office memorandum dated 25th September, 1997, the appellant was released from the service and that too from the next day. It is not disputed that the appellant was paid his salaries etc. till his date of actual release i.e. 26th September 1997, and, therefore, the jural relationship of employee and employer between the appellant and the respondents did not come to an end on the date of acceptance of the voluntary retirement and said relationship continued till 26th September, 1997. The appellant admittedly sent two letters withdrawing his voluntary retirement before his actual date of release from service. Therefore, in view of the settled position of law and the terms of the letter of acceptance, the appellant had locus poenitentiae to withdraw of proposal for voluntary retirement before the relationship of employer and employee came to an end."

Thereafter a Constitution Bench of the Hon'ble Supreme Court, in Union ofIndia Vs.Gopal Chandra Misra (supra) held as under:-

> "The general principle is that in the absence of a

> legal, contractual or constitutional bar, a 'prospective' resignation can be withdrawn at any time before it becomes effective, and 'it becomes effective when it operates to terminate the employment or the office-tenure of the resignor' (Emphasis ours). As stated above in the present case in the VRS, there was no indication regarding effective date of voluntary resignation and there is also no condition that once it was accepted it could not be withdrawn."

In Union of India & Anr.Vs. Wg. Comm. T. Parthasarthy, JT 2000 (Supp) 2 SC 490, the Hon'ble Supreme Court held that even if the policy of the Government provides that once the resignation is submitted by the employee and he was fully aware of the fact that he cannot seek for cancellation of the application, such policy will be destructive of the right of the employee in law to withdraw his request for premature retirement before it ever becomes operative and effective and effected termination of his status and relation with department. The Hon'ble Apex Court held as under:-

> "The reliance placed upon the so-called policy decision which obligated the respondent to furnish a certificate to the extent that he was fully aware of the fact that he cannot later seek for cancellation of the application once made for premature retirement cannot, in our view, be destructive of the right of the respondent, in law, to withdraw his request for premature retirement before it ever becomes operative and effective and effected termination of his status and relation with the department. When the legal position is that much clear, it would be futile for the appellants to base their rights on some policy decision of the department or a mere certificate of the respondent being aware of a particular position which has no sanctity or basis in

> law to destroy such rights which otherwise inhered in him and available in law. No such deprivation of a substantive right of a person can be denied except on the basis of any statutory provision or rule or regulation. There being none brought to our notice in this case, the claim of the appellants cannot be countenanced in our hands. Even that apart the reasoning of the High Court that the case of the respondent will not be covered by the type or nature of the mischief sought to be curbed by the so-called policy decision also cannot be said to suffer any conformity in law, to warrant our interference."

In the instant case, the petitioner submitted the application on11-4-2005 seeking voluntary retirement with effect from 1-10-2005. Vide application Annx.3 dated 1-7-2005, the petitioner sought withdrawal of the application for voluntary retirement. On being asked to furnish the reason for withdrawal of the application for voluntary retirement, the petitioner furnished the reasons therefor. In this view of the matter, the respondents were not justified in accepting the application for voluntary retirement on 29-9-2005 (Vide Annx.8) and retiring the petitioner voluntarily w.e.f. 1-10-2005 (vide Annx.9). In this view of the matter, the orders impugned Annx.8 dated 29-9-2005 and Annx.9 dated 1-10-2005 cannot be sustained in the eye of law and deserve to the quashed.

Consequently, the writ petition is allowed. The impugned orders Annx.8 dated 29-9-2005 and Annx.9 dated 1.10.2005 are set aside. The petitioner shall be deemed in continuous service of the respondents and he will be entitled for

continuity of service and notional benefits. However, the petitioner is entitled for regular salary from the date of his joining the duty. There shall be no order as to costs.

(H.R. PANWAR), J.

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